

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 00-0461
INDIANA INDIVIDUAL INCOME TAX
For the 1999 Tax Year**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Social Security Benefits Subject to Indiana Individual Income Tax.

Authority: IC 6-3-1-3.5(a); IC 6-3-1-3.5(a)(12).

Taxpayer disputes the purported taxation of his Social Security Income.

II. Demand for Abatement of Interest.

Authority: IC 6-8.1-10-1.

Taxpayer has protested the imposition of interest on assessed taxes and requests that the interest, which has accumulated on those taxes, be abated.

STATEMENT OF FACTS

Taxpayer filed IT-40 Individual Income Tax Form for the 1999 tax year. On line one, taxpayer reported approximately \$66,000 in Federal Adjusted Gross Income. On line six, taxpayer listed approximately \$14,000 in Indiana deductions resulting in Indiana Adjusted Gross Income of \$52,000. The Department determined that taxpayer had overstated the amount of Indiana deductions by \$2,000 and assessed the taxpayer for the taxes due on that amount. Taxpayer maintains that the \$2,000 consists of Social Security Benefits and is not subject to Indiana individual income tax. Other related and unrelated issues raised by the taxpayer within taxpayer's original protest have been waived by taxpayer.

DISCUSSION

I. Social Security Benefits Subject to Indiana Individual Income Tax.

IC 6-3-1-3.5(a) provides the starting point for determining taxpayer's taxable income. That code section states "[w]hen used in IC 6-3, the term 'adjusted gross income' shall mean the following: (a) In the case of all individuals 'adjusted gross income' (as defined by Section 62 of the Internal Revenue Code)" Once the taxpayer's Indiana adjusted gross income is determined, that amount is subject to certain adjustments, one of which is relevant here.

IC 6-3-1-3.5(a)(12) allows the Indiana taxpayer to "[s]ubtract an amount equal to the amount of federal Social Security and Railroad Retirement benefits included in the taxpayer's federal gross income"

Taxpayer is correct in his assertion that he received \$14,000 in Social Security benefits and that none of the \$14,000 is subject to the state's individual income tax. Where taxpayer errs is in his application of the Indiana Code provisions regarding the specific tax treatment of those Social Security benefits. When taxpayer prepared his federal return – for reasons not relevant here – taxpayer was only required to report \$12,000 of the \$14,000 in Social Security. Therefore, from that point forward, the unreported \$2,000 was "off the table" for any further state or federal tax consideration. Because the \$2,000 was in tax limbo from the time that taxpayer prepared his federal returns, the \$2,000 could not be considered – either to increase or decrease his liability – in any calculation of taxpayer's Indiana individual income tax.

When taxpayer reported \$66,000 in Federal adjusted gross income on his Indiana return, the \$2,000 was not part of the calculus. The \$66,000 on taxpayer's federal return only contained the \$12,000 in Social Security benefits that were subject to federal income tax.

Taxpayer properly reported the \$66,000 – including the \$12,000 in social security benefits – on line one of his Indiana return. Thereafter, on line six taxpayer was entitled to an Indiana deduction for the \$12,000 in Social Security Benefits included within the \$66,000. What taxpayer attempted to do was deduct the original \$14,000 in Social Security Benefits. Taxpayer is not entitled to retrieve the \$2,000 - never part of the calculation and never part of taxpayer's federal adjusted gross income – and make a second Indiana deduction for that amount. The \$2,000 was never contained within the \$66,000 and may not be removed from that amount. Metaphorically speaking, taxpayer cannot remove an apple from the basket when the apple was never in the basket to begin with. IC 6-3-1-3.5(a)(12) permits the taxpayer to "subtract an amount equal to the amount of federal Social Security . . . benefits *included* in the taxpayer's federal gross income" (Emphasis added).

FINDING

Taxpayer's protest is respectfully denied.

II. Demand for Abatement of Interest.

Taxpayer protests the imposition of interest on his assessed taxes and requests that the interest that has accumulated on those taxes be abated. Under IC 6-8.1-10-1(a), if a person incurs a deficiency upon a determination by the Department, “the person *is* subject to interest on the nonpayment.”

The Department has no discretion regarding the imposition of interest. Under IC 6-8.10 the accumulated interest is not abated for any reason and the Department must decline taxpayer’s invitation to do so.

FINDING

Taxpayer’s protest and request for abatement is respectfully denied.

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